

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE LEONTHA WALLACE,

Defendant-Appellant.

UNPUBLISHED

June 5, 2003

No. 238355

Ingham Circuit Court

LC No. 00-076636-FC

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant was convicted by a jury of bank robbery, MCL 750.531. He was sentenced to a prison term of 47 to 180 months. He appeals as of right, challenging only his sentence. We affirm.

Defendant was convicted of committing a bank robbery by passing a note to a bank teller stating that he had a gun and demanding all her hundred dollar bills, and then leaving the bank with eight \$100 bills that she gave him.

Defendant argues that the trial court erred by scoring five points under prior record variable (PRV) 2 of the sentencing guidelines, which was based on his prior conviction of unlawful use of a motor vehicle, MCL 750.414,¹ and that this resulted in an unduly high guidelines range. We disagree. Because defendant did not properly preserve his objection to the scoring of PRV 2 below,² we may grant relief with regard to this issue only for plain error that affected defendant's substantial rights. See *People v Kimble*, 252 Mich App 269, 277-278; 651 NW2d 798 (2002), lv gtd ___ Mich ___; 659 NW2d 231 (2003).

We conclude that defendant has not established any error in the scoring of PRV 2. MCL 777.52 directs that five points should be scored for PRV 2 if the offender has "1 prior low severity felony conviction." Defendant essentially argues that the trial court should not have

¹ MCL 750.414 describes an offense commonly known as joyriding.

² Defendant's vague statement at the sentencing hearing to the effect that he thought the sentencing guidelines were "supposed to be [scored at] 12 to 30 months, but now it's 19 to 47 months" cannot reasonably be considered a proper objection to the scoring of PRV 2.

treated his prior joyriding conviction as a “low severity felony conviction” because the joyriding statute, MCL 750.414, defines joyriding as a misdemeanor. However, as the prosecution argues, MCL 777.52 expressly defines “low severity felony conviction” to include a conviction for a crime listed in offense class “H.” MCL 777.16u expressly lists a violation of MCL 750.414, i.e., joyriding, in offense class “H.” Thus, even though joyriding is identified as a misdemeanor in MCL 750.414, it falls within the plain and unambiguous definition of “low severity felony conviction” provided by MCL 777.52, which governs the scoring of PRV 2.

Accordingly, the trial court correctly scored five points under PRV 2 for defendant’s prior joyriding conviction, because it qualifies as a “low severity felony conviction” for purposes of scoring PRV 2. See *People v Brown*, 249 Mich App 382, 385; 642 NW2d 382 (2002) (courts must apply meaning of terms as expressly defined in a statute). While defendant asserts that there is ambiguity because joyriding is identified as a misdemeanor in MCL 750.414, the specific inclusion of a joyriding conviction as a “low severity felony conviction” by MCL 777.52 prevails over the general definition of that crime as a misdemeanor with regard to the scoring of PRV 2. See, e.g., *People v Houston*, 237 Mich App 707, 714; 604 NW2d 706 (1999).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Peter D. O’Connell